

ORIGINAL

SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION - FELONY BRANCH

UNITED STATES OF AMERICA

2012 OCT -9 P 3:56
Docket No: 2010-CF1-5678

v.

FILED
Honorable Michael L. Rankin

NATHANIEL D. SIMMS

Sentencing: October 19, 2012

MEMORANDUM IN AID OF SENTENCING

The United States, by its counsel, the United States Attorney for the District of Columbia, respectfully submits this memorandum on the sentencing of Nathaniel D. Simms, also known as "Nate." Simms will be before the Court for sentencing having entered a guilty plea to a seven-count Information charging him with two counts of conspiracy to commit murder and five counts of second-degree murder while armed. Both before and after he entered this guilty plea, Simms cooperated with law enforcement and provided substantial assistance in the detection and prosecution of other offenders. He was, by a wide margin, the single most important witness in the successful prosecution of five individuals responsible for multiple homicides and shootings in March of 2010 and, in the government's view, has established his eligibility for a sentencing departure. The government's recommendation is that Simms be sentenced to an aggregate of sixty years in prison followed by five years of supervised release, that the Court suspend execution of all but twenty-five years in prison and the period of supervised release, and that Simms – upon his release from prison – also be ordered to serve five years of probation. In recommending this sentence, the government has sought to strike an appropriate balance between punishing Simms for his crimes while crediting him for his most meaningful contribution to the successful detection and prosecution of other offenders.

I. Factual Background

In late March of 2010, a series of violent crimes jolted the District of Columbia community. On Monday, March 22, 2010, at about 12:30 a.m., in the area of 1333 Alabama Avenue, S.E., twenty-year old Jordan Howe was shot and killed, and fifteen-year-old Victor Kevin Martin and twenty-two year-old Tavon Lambert were shot and wounded. The crime scene evidence established that a barrage of bullets had been fired. Twenty-eight 7.62 x 39 mm shell casings fired from an AK-47 assault rifle were recovered, along with five .380 caliber shell casings, and three unfired 12 Gauge shotgun shells.

Late on Tuesday morning, March 23, 2010, at about 11:00 a.m., Sanquan Carter was arrested and charged with the murder of Jordan Howe. Later that afternoon, at about 6:00 p.m., in the area of 6th and Chesapeake Streets, S.E., Sanquan Carter's older brother, Orlando Carter, was shot and wounded. Orlando Carter was treated at area hospitals and was released that same night. Orlando Carter was uncooperative when interviewed by police, and the identity of his assailant was uncertain at best. No shell casings were found at the crime scene, and no witnesses stepped forward to shed light on who might have been responsible for the shooting.

On Tuesday, March 30, 2010, the day of Jordan Howe's funeral, multiple homicides and shootings occurred. These shootings left four dead and six wounded. The first to die that night was Tavon Nelson, who was shot and killed in the Wingate apartment complex, specifically in the area of the Recreation Center and 78 Galveston Street, S.W., at about 7:20 p.m. Nelson was shot five times. Seven 9mm shell casings and three .45 caliber shell casings were recovered at the scene. Witnesses saw the assailants leave the scene in a recent model silver Town & Country minivan, and a lookout for such a vehicle was broadcast via radio by the police.

Some five minutes after Nelson was shot and killed, at about 7:25 p.m., in the area of 4022 South Capitol Street, S.E., a mass shooting occurred. Nine individuals were shot. Three were killed, and six were wounded. All of those who were shot were friends of Jordan Howe, and most had attended his funeral earlier that day. They had gathered on South Capitol Street, a favorite location of Howe's, in the aftermath of the funeral, to remember their friend. A 7.62 x 39 mm shell casing, matching those found at the scene of Howe's murder, was recovered. Additionally, .45 caliber shell casings, and a 9mm shell casing, matching those found at the scene of Tavon Nelson's murder, were recovered.

In the immediate aftermath of the South Capitol Street shootings, police spotted and pursued a silver Town & Country minivan. The high speed pursuit of the minivan covered some 13.4 miles, and finally came to an end in an alley between the 600 blocks of Atlantic and Yuma Streets, S.E. Four individuals bailed out of the minivan and ran. Two of the four, Orlando Carter and Nathaniel Simms, were apprehended. The other two escaped. Not far from the scene of the bailout, a fourteen-year-old named Malik Carter – no relation to Sanquan or Orlando Carter – was apprehended after having been mistakenly identified by two police sergeants as the driver of the minivan.

The city was shocked by the violence on the night of March 30, 2010. Many citizens were angry. Many more mourned for the victims. The relationship between the violent crimes on March 22, 23, and 30, 2010, if any, was unclear. Of great concern, as well, was the identity and whereabouts of the other perpetrators of the crimes. As the dead were buried, and as surviving victims were treated and began the recovery process, the investigation into the violent crimes that shook the foundation of the city began in earnest. This was the backdrop when, in early April of

2010, Nathaniel Simms – at his own initiative – made the unexpected decision to cooperate with law enforcement in the investigation of what came to be known as the South Capitol Street case.

II. Procedural Background

When he was arrested on March 30, 2010, Nathaniel Simms was charged with three counts of first degree murder. Simms had his initial appearance before the Court the next day and was ordered held without bond. On April 12, 2010, less than two weeks after his arrest, Simms agreed to be debriefed. On April 21, 2010, Simms entered into a plea and cooperation agreement with the government. Pursuant to the terms of that agreement, Simms promised to plead guilty to the previously described seven-count Information. Simms also promised to cooperate with the government by providing truthful testimony if and when called upon, and, with the approval of the Court, to defer his sentencing until after his cooperation was complete. On April 29, 2010, on the public record, Simms entered guilty pleas before this Court. Sentencing of Simms is scheduled for October 19, 2012.

III. Guilty Plea by Nathaniel Simms

In entering his guilty pleas on April 29, 2010, Simms acknowledged that the following facts, which were part of a written and signed proffer of evidence filed with the Court, and which are set forth here verbatim, were true and accurate:

The Conspiracy to Commit Murder and the Murder of Jordan Howe

The First Conspiracy to Commit Murder

Between on or about Sunday, March 21, 2010, and on or about Monday, March 22, 2010, within the District of Columbia, Nathaniel D. Simms, also known as “Nate” (hereinafter, “Nathaniel Simms”), Orlando Carter, also known as “Lando” or “Dough,” (hereinafter, “Orlando Carter”), Sanquan Carter, also known as “Bootsie,” (hereinafter, “Sanquan Carter”), Jeffrey D. Best, also known as “Dro,” “Little Dro,” or “J.B.” (hereinafter, “Jeffrey Best”), and Lamar J. Williams, also

known as "Neph" or Nephew" (hereinafter, "Lamar Williams") did knowingly and willfully combine, conspire, confederate and agree together to assault and kill individuals believed to be responsible for taking property, later determined to include a bracelet, belonging to Sanquan Carter.

The object of the conspiracy was to shoot and kill individuals believed to be responsible for taking property, later determined to include a bracelet, belonging to Sanquan Carter, the brother of coconspirator Orlando Carter.

Background to the Conspiracy

By way of background, on the night of Sunday, March 21, 2010, nineteen-year-old Sanquan Carter, went to the 1300 block of Alabama Avenue, S.E. Inside an apartment at 1333 Alabama Avenue, S.E., Sanquan Carter had sex with a fifteen-year-old girl whose identity is known to the government. After that, Sanquan Carter discovered that a gold-colored bracelet that belonged to him and that he had removed from his wrist, was missing. Concluding that someone had stolen his property, Sanquan Carter became incensed. Angry and bent on violent retribution, Sanquan Carter notified his older brother, twenty-year-old Orlando Carter, and told him that someone had taken his property, later determined to include a bracelet.

Acts in Furtherance of the Conspiracy

Upon receiving the call from his younger brother Sanquan Carter, Orlando Carter directed Nathaniel Simms to call Jeffrey Best, whom Orlando Carter had just dropped off, and to tell Jeffrey Best to come back outside at once. Nathaniel Simms, who at the time was with Orlando Carter on Brandywine Street, S.E., did as he was told.

Upon receipt of Orlando Carter's instruction, as relayed by Nathaniel Simms, Jeffrey Best came out of the house at 626 Brandywine Street, S.E., which is Jeffrey Best's family home. Jeffrey Best joined Orlando Carter and Nathaniel Simms, who were in a silver four-door 2008 Kia Spectra EX with Maryland license tags (hereinafter, the "silver Kia Spectra").

Moments later, from a nearby location, Orlando Carter obtained a 7.62 x 39 mm AK-47 type assault rifle with a sling or strap (hereinafter, the "AK-47 assault rifle"). Orlando Carter got back into the driver's seat of the silver Kia Spectra and placed the AK-47 assault rifle in the back next to where Jeffrey Best was seated.¹

Having obtained the AK-47 assault rifle, Orlando Carter, Jeffrey Best, and Nathaniel Simms went in the silver Kia Spectra to the residence of coconspirator Lamar Williams. At that location, Lamar Williams provided coconspirators Orlando Carter, Jeffrey Best, and Nathaniel Simms with a small silver or chrome .380 caliber semi-automatic pistol with a gray handle, and also with a pump-

¹ Simms later clarified that Jeffrey Best actually got back into the silver Kia Spectra after Orlando Carter had retrieved the AK-47 assault rifle.

action 12 Gauge shotgun. With the three firearms in hand, Orlando Carter spoke with Jeffrey Best, Nathaniel Simms, and Lamar Williams about his plan to retaliate against the individuals believed to be responsible for taking property, later determined to include a bracelet, belonging to his younger brother, Sanquan Carter, and about his intention to so do.

After obtaining the three firearms, Orlando Carter called his brother Sanquan Carter, and the two spoke. Orlando Carter then drove the silver Kia Spectra to the 1300 block of Alabama Avenue, S.E. Coconspirator Nathaniel Simms was in the front passenger's seat, and coconspirator Jeffrey Best was in the back seat on the driver's side of the car. Upon arriving in the 1300 block of Alabama Avenue, S.E., Orlando Carter stopped near the apartment building at 1333 Alabama Avenue, S.E., in front of which a number of individuals were gathered.

Having observed the arrival of the silver Kia Spectra, Sanquan Carter walked over and talked to Orlando Carter, who was still in the driver's seat. The two brothers and coconspirators talked briefly about locating the individuals believed to be responsible for the theft of property, later determined to include a bracelet, belonging to Sanquan Carter, who gestured in the direction of the several individuals gathered in front of the apartment building at 1333 Alabama Avenue, S.E., and indicated that the responsible individuals were present and assembled right there.

Sanquan Carter snatched the small silver or chrome .380 caliber semi-automatic pistol from the lap of Nathaniel Simms. So armed, Sanquan Carter walked towards the individuals gathered in front of 1333 Alabama Avenue, S.E., and confronted them. Concurrently Orlando Carter, armed with the AK-47 assault rifle, got out of the silver Kia Spectra and followed generally in the same direction, as did Jeffrey Best, who was armed with the pump-action 12 Gauge shotgun that had been provided to him by Lamar Williams.

From the front passenger seat of the silver Kia Spectra, Nathaniel Simms made his way into the driver's seat. In compliance with Orlando Carter's instructions, Nathaniel Simms turned around the silver Kia Spectra and positioned it so that it was facing Alabama Avenue, S.E., thereby affording the coconspirators a more direct and efficient escape route.

Displaying the .380 caliber semi-automatic pistol, Sanquan Carter began to pat down individuals who were in front of 1333 Alabama Avenue, S.E., searching for his missing bracelet. Maintaining control, Orlando Carter, armed with the AK-47 assault rifle, stood further back in the roadway, as did Jeffrey Best, who was armed with the pump-action 12 Gauge shotgun that was provided to him by Lamar Williams.

Increasingly infuriated, Sanquan Carter began shooting the .380 caliber semi-automatic pistol at, and in the direction of, those individuals gathered in front of 1333 Alabama Avenue, S.E., eventually firing five rounds. At about the same time, Orlando Carter began to shoot the AK-47 assault rifle in the direction of those assembled, firing twenty-eight 7.62 x 39 mm cartridges. Similarly, Jeffrey Best, who later claimed he fired at least once at those in front of 1333 Alabama

Avenue, S.E., tried to shoot the pump-action 12 Gauge shotgun, but instead ejected three unfired 12 Gauge shotgun shells as he repeatedly worked the shotgun's slide.

Unarmed and helpless, nineteen-year-old Jordan Howe was struck by gunfire as he was seated inside a white four-door 2008 Suzuki Reno parked in front of 1333 Alabama Avenue, S.E. Struck also by the gunfire were two individuals whose identities are known to the government. Jordan Howe was transported by ambulance to George Washington University Hospital, where he was pronounced dead at 1:06 a.m. that same morning. Later that day, an autopsy on the body of Jordan Howe was performed by Dr. Joseph Pestaner of the Office of the Chief Medical Examiner for the District of Columbia. Among other findings, Dr. Pestaner determined that the cause of Jordan Howe's death was multiple gunshot wounds, and ruled that the manner of death was homicide. The two other victims were treated at local hospitals for gunshot wounds.

After the shooting stopped, Orlando Carter, Sanquan Carter, and Jeffrey Best ran back to the silver Kia Spectra where, by design, Nathaniel Simms was waiting with the engine running. Orlando Carter got in the front passenger seat while Sanquan Carter and Jeffrey Best got in the back seat of the car. The four coconspirators drove away from the scene. (Conspiracy to Commit Murder, in violation of 22 D.C. Code, Section 1805a)

The Conspiracy to Commit Murder and the Multiple Murders on March 30, 2010

The Second Conspiracy to Commit Murder

Between on or about Tuesday, March 23, 2010, and on or about Tuesday, March 30, 2010, within the District of Columbia, Nathaniel D. Simms, also known as "Nate" (hereinafter, "Nathaniel Simms"), and coconspirators whose identities are known to the government, including Orlando Carter, also known as "Lando" or "Dough" (hereinafter, "Orlando Carter"), Robert L. Bost, also known as "Little Rob" or "Chuck" (hereinafter, "Robert Bost"), Jeffrey D. Best, also known as "Dro," "Little Dro," or "J.B." (hereinafter, "Jeffrey Best"), and Lamar J. Williams, also known as "Neph" or "Nephew" (hereinafter, "Lamar Williams"), did knowingly and willfully combine, conspire, confederate and agree together to assault and kill friends and associates of Jordan Howe and in retaliation for the shooting of Orlando Carter that occurred on or about March 23, 2010.

The object of the conspiracy was to shoot and kill friends and associates of Jordan Howe, who were believed to be responsible for shooting Orlando Carter, in the area of 6th and Chesapeake Streets, S.E., Washington, D.C., at about 6:02 p.m. on Tuesday, March 23, 2010.

Background to the Conspiracy

By way of background, at about 12:30 a.m. on or about Monday, March 22, 2010, in the area of 1333 Alabama Avenue, S.E., Orlando Carter was actively involved in the murder of Jordan Howe and the shooting of two other individuals whose identities are known to the government. At about 6:02 p.m. on Tuesday, March 23, 2010, in the area of 6th and Chesapeake Streets, S.E., Orlando

Carter was himself shot and wounded. Orlando Carter was treated at local hospitals for a graze wound to his head and for a gunshot wound to his shoulder. He was released later that same night.

Acts in Furtherance of the Conspiracy

In the aftermath of having been shot on March 23, 2010, Orlando Carter concluded that friends and associates of Jordan Howe were responsible for shooting him. Orlando Carter vowed to exact violent revenge and, to that end, recruited coconspirators whose identities are known to the government, including Nathaniel Simms, to assist him in executing a plan he developed. Initially, Orlando Carter's plan was for Orlando Carter and his coconspirators, including Nathaniel Simms, to identify the date, time, and location of the funeral services for Jordan Howe, to appear at those funeral services, and then and there to shoot and kill as many friends and associates of Jordan Howe as they possibly could.

Orlando Carter told coconspirators whose identities are known to the government, including Nathaniel Simms, Robert Bost, Jeffrey Best, and Lamar Williams, about his plan to show up at the funeral service for Jordan Howe and to shoot and kill friends and associates of Jordan Howe who were in attendance. Orlando Carter learned that the funeral service for Jordan Howe was scheduled to occur late Tuesday morning, March 30, 2010.

The Rental of a Minivan

In the furtherance of the plan to kill those attending the funeral of Jordan Howe, Orlando Carter decided to rent a minivan which he and coconspirators, including Nathaniel Simms, could use to shoot and kill those attending the funeral services for Jordan Howe scheduled for late Tuesday morning, March 30, 2010. To that end, Orlando Carter and various coconspirators, including Nathaniel Simms and others, made repeated unsuccessful efforts to rent a minivan on Monday, March 29, 2010, and on the morning of Tuesday, March 30, 2010, prior to the funeral services for Jordan Howe.

On the evening of Tuesday, March 30, 2010, at approximately 5:40 pm, through an intermediary whose identity is known to the government, Orlando Carter successfully completed the rental of a silver-colored 2009 Chrysler Town & Country minivan bearing Virginia license tags XRN-9075 (hereinafter, "the silver minivan").

The Gathering of Firearms

Having secured the rental of the silver minivan, Orlando Carter set out to meet with his coconspirators and to gather firearms that could be used to shoot and kill friends and associates of Jordan Howe. In the silver minivan, Orlando Carter picked up and met with coconspirator Jeffrey Best, who had possession of a Glock 9mm semi-automatic pistol. Orlando Carter also picked up and met with coconspirator Robert Bost, who had possession of a .45 caliber semi-automatic pistol.

Together, in the silver minivan, Orlando Carter, Jeffrey Best, and Robert Bost picked up and met with coconspirator Lamar Williams, and then coconspirator Nathaniel Simms.

In the silver minivan, the five coconspirators – Orlando Carter, Jeffrey Best, Robert Bost, Lamar Williams, and Nathaniel Simms – drove next to the residence of Lamar Williams, where they parked. Lamar Williams went inside the residence and returned with the AK-47 assault rifle, which was the same weapon which Orlando Carter used in the murder of Jordan Howe on March 22, 2010. Orlando Carter sent Lamar Williams back inside the residence to obtain another magazine for the AK-47 assault rifle that had a larger capacity. Lamar Williams re-entered the residence and returned with the larger magazine and provided it, together with a pair of gloves, to Robert Bost, who transferred cartridges from the existing magazine to the larger-capacity magazine. Lamar Williams asked if Orlando Carter also wanted the pump-action 12 Gauge shotgun, but Orlando Carter declined that invitation.

While Robert Bost was loading cartridges into the larger-capacity magazine for the AK-47 assault rifle, the discussion among the five coconspirators was about the amended plan to retaliate against friends and associates of Jordan Howe, whose funeral had already occurred. Similar discussions among various combinations of the coconspirators had taken place in the intervening days since Orlando Carter was shot on March 23, 2010. On the evening of March 30, 2010, however, the discussion had urgency. The minivan had been rented. Three guns had been gathered. The talk among the five coconspirators was about going forward that same night with the planned retaliation against friends and associates of Jordan Howe.

After supplying the AK-47 assault rifle and the larger-capacity magazine to his coconspirators, Lamar Williams re-entered the silver minivan with Orlando Carter, Robert Bost, Jeffrey Best, and Nathaniel Simms. The five coconspirators drove a short distance from the residence of Lamar Williams to a location known to the government, where Lamar Williams got out of the silver minivan.

The Attempted Robbery and Murder of Tavon Nelson

With the departure of Lamar Williams, four coconspirators remained in the silver minivan. Orlando Carter was in the driver's seat. Robert Bost, armed with a .45 caliber semi-automatic pistol, was in the front passenger seat. Jeffrey Best, armed with the Glock 9mm semi-automatic pistol, sat in the back seat on the driver's side. Nathaniel Simms sat in the back seat on the passenger side. The AK-47 assault rifle was on the floor of the minivan in the area of the back seats, near where Jeffrey Best and Nathaniel Simms were seated.

At this point, Orlando Carter became focused on obtaining another gun that could be used to effectuate the plan to shoot and kill friends and associates of Jordan Howe. Orlando Carter decided to rob a particular individual whom he believed had a firearm suitable for use in the shootings that were the object of the conspiracy. To that end, Orlando Carter used his cell phone and

repeatedly called someone. During those calls, Orlando Carter inquired if the intended victim of the robbery was present and if that person had his gun on him.

Receiving affirmative assurances, Orlando Carter drove to the Wingate apartment complex, a gated community located in the unit block of Galveston Street, S.W. Orlando Carter turned into the apartment complex and parked the silver minivan. Orlando Carter called the same individual again, seeking further confirmation that the intended victim of the robbery was nearby and was armed with a gun. Carter indicated during the call that he was about to send in two men to commit the robbery.

With that, coconspirator Robert Bost, armed with a .45 caliber semi-automatic pistol, and coconspirator Jeffrey Best, armed with the Glock 9mm semi-automatic pistol, got out of the silver minivan. When they exited the silver minivan, Robert Bost and Jeffrey Best had on black ninja-type masks that were rolled up on the tops of their heads. Orlando Carter and Nathaniel Simms remained inside the silver minivan.

At approximately 7:20 p.m. on Tuesday, March 30, 2010, Jeffrey Best and Robert Bost confronted seventeen year old Tavon Nelson, who was outside and in the vicinity of 78 Galveston Street, S.W., with the intent to rob him and take his gun. When Tavon Nelson determined that Jeffrey Best and Robert Bost were about to rob him, he reached for his own pistol. Jeffrey Best, armed with the Glock 9mm semi-automatic pistol, drew his weapon and opened fire first, striking Tavon Nelson. Robert Bost, armed with a .45 caliber semi-automatic pistol, also shot at and struck Tavon Nelson. Jeffrey Best and Robert Bost inflicted wounds from which Tavon Nelson subsequently died. An autopsy later established that Tavon Nelson died as a result of multiple gunshot wounds and that the manner of his death was homicide.

Having shot Tavon Nelson, Jeffrey Best and Robert Bost turned and began running back to the silver minivan with their masks pulled down. Jeffrey Best was the first to reach the minivan, entering through the sliding door on the driver's side. Robert Bost arrived next, getting back in the front passenger seat. Once inside of the minivan, Jeffrey Best and Robert Bost reported to Orlando Carter about what had transpired. They indicated that when they approached the intended victim (Tavon Nelson) in an effort to rob him of his gun, the victim pulled his own gun out on them. As a result, they said, they opened fire. Jeffrey Best indicated that his gun had gotten stuck in his coat but that he had managed nonetheless free it and shoot the victim. Robert Bost stated that he, too, shot the victim, finishing what Jeffrey Best had started.

The South Capitol Street Shootings

Conscious that the police likely would soon be arriving, Orlando Carter, Jeffrey Best, Robert Bost, and Nathaniel Simms left the Wingate apartment complex in the silver rented minivan, turning right onto Martin Luther King Junior Avenue, S.W., intent on their quest to locate and retaliate against friends and associates of Jordan Howe. At that point, Orlando Carter advised the other coconspirators in the silver minivan that he had obtained information that Jordan Howe's friends and

associates might be near the Domino's Pizza and a PNC bank, in or near the 4000-4200 blocks of South Capitol Street.

With Orlando Carter at the wheel, the conspirators drove together in the silver minivan to the 4000 block of South Capitol Street, where Orlando Carter, Robert Bost, Jeffrey Best, and Nathaniel Simms spotted a sizeable group of individuals, several of whom were wearing T-shirts memorializing Jordan Howe. Those individuals were gathered in front of 4022 South Capitol Street, S.E., a modest single-family dwelling located at the corner of South Capitol and Brandywine Streets, S.E.

Orlando Carter continued southbound on South Capitol Street, driving past the crowd of individuals mourning the death of Jordan Howe. Upon reaching the intersection of South Capitol and Chesapeake Streets, Orlando Carter made a "U" turn and began driving northbound on South Capitol Street in the direction of 4022 South Capitol Street, S.E. As they approached 4022 South Capitol Street, S.E., each of the conspirators in the silver minivan put on black ninja-type masks to conceal their identities. As the silver minivan approached the crowd gathered at 4022 South Capitol Street, S.E., Orlando Carter slowed, pushed a button electronically lowering the windows in the minivan, and stated that he wanted Jeffrey Best, Robert Bost, and Nathaniel Simms to have their guns ready and the gun barrels out of the windows of the silver minivan.

At approximately 7:25 p.m. on Tuesday, March 30, 2010, Orlando Carter brought the silver minivan to a complete stop in front of 4022 South Capitol Street, S.E. When the minivan stopped, Jeffrey Best, who was seated in the back seat on the driver's side, reached across to the passenger side of the silver minivan with the Glock 9mm semi-automatic pistol and began to shoot in the direction of those gathered to mourn the loss of Jordan Howe. Robert Bost, armed with the .45 caliber semi-automatic pistol, reached out of the front passenger window of the rented minivan and did the same. Nathaniel Simms grabbed the AK-47 assault rifle, leaned back, and also began to shoot out of the window on the passenger side of the silver minivan and in the direction of the mourners. In sum, three coconspirators – Jeffrey Best, Robert Bost, and Nathaniel Simms – opened fire intentionally and indiscriminately at the crowd of individuals arrayed before them.

Bullets fired by Jeffrey Best, Robert Bost, and Nathaniel Simms struck a total of nine individuals who gathered in front of 4022 South Capitol Street, S.E. Three individuals, sixteen-year-old Brishell Jones, eighteen-year-old Devaughn Boyd, and nineteen-year-old William Jones, were killed as a result of the gunshot wounds they suffered. Six others – fifteen-year-old Jabri Smith, seventeen-year-old Rashauna Brown, twenty-year-old Derrick Lanier, twenty-year-old Terra Brown, twenty-year-old Jamal Thomas Blakeney, and twenty-nine year-old Kevin Attaway were wounded in the gunfire.

After the shooting stopped, Orlando Carter waited briefly in front of 4022 South Capitol Street, S.E., before driving off northbound on South Capitol Street. As the coconspirators were northbound on South Capitol Street, S.E., in the area of Atlantic Street, S.E., the coconspirators removed their masks, when Orlando Carter announced that the driver of a marked police car that was

driving southbound on South Capitol Street, S.E., was looking at them and talking on his radio. When the marked police car engaged its emergency equipment and began to follow the silver minivan, an extended police chase ensued. During the entirety of the chase, police cars were behind the silver minivan, and the coconspirators soon became aware that a helicopter also was tracking them. In the course of the police pursuit, Orlando Carter repeatedly told Jeffrey Best, Robert Bost, and Nathaniel Simms to throw the guns out of the silver minivan. Ultimately, Nathaniel Simms complied and threw the AK-47 assault rifle from the silver minivan in the 2100 block of Savannah Terrace, S.E.

The police chase of the silver minivan came to an end in an alley in the rear of the 600 block of Atlantic Street, S.E. Moments before the pursuit ended, Orlando Carter announced that each of the coconspirators in the silver minivan was going to have to bail out and run. In the alley, in a futile effort to thwart the police, Orlando Carter repeatedly tried to maneuver the silver minivan in such a manner that it would cause the pursuing police cars to collide with one another. When these efforts failed, Orlando Carter intentionally drove the silver minivan into the closest police car, striking the front of that police car and causing the silver minivan to come to a stop. With that, the coconspirators rapidly exited the silver minivan and fled on foot. Nathaniel Simms was apprehended after a short foot pursuit, as was Orlando Carter.

IV. Substantial Assistance to Law Enforcement

Nathaniel Simms's cooperation with law enforcement began soon after his arrest on March 30, 2010, and contributed immensely to the successful prosecution of numerous other individuals. On April 12, 2010, less than two weeks after his arrest for the three murders on South Capitol Street, Simms signed a debriefing letter and began to cooperate with law enforcement. On April 21, 2010, Simms entered into a plea and cooperation agreement with the government. Pursuant to the terms of that agreement, Simms promised to plead guilty to a seven-count Information charging him with two counts of conspiracy to commit murder and with five counts of second-degree murder while armed. Simms also promised to cooperate with the government by providing truthful testimony if and when called upon, and, with the approval of the Court, to defer his sentencing until after his cooperation was complete. On April 29, 2010, but one month after his arrest on March 30, 2010, on the public record, Simms entered guilty pleas before this Court.

During his debriefings, Simms – in the opinion of all who were involved – was forthright, genuinely remorseful, and truthful. Significantly, Simms did not simply point his finger at others. Instead, he signaled his willingness to accept responsibility for all of his own criminal conduct. Here it is worth remembering that Simms initially was charged with three murders – those of Brishell Jones, Davaughn Boyd, and William Jones – all of whom were killed in the South Capitol Street shootings which occurred at about 7:25 p.m. on March 30, 2010. In entering his guilty plea, however, Simms accepted responsibility for two other murders. Those were the murder of Jordan Howe, which occurred in front of 1333 Alabama Avenue, S.E., at about 12:30 a.m., on March 22, 2010, and the murder of Tavon Nelson, which occurred in the Wingate apartment complex at about 7:20 p.m. on March 30, 2010. Notably, Simms played a supporting role in both of these homicides, but he fired no gun. He served chiefly as the getaway driver during the murder of Jordan Howe on March 22, 2010. He simply waited in the minivan during the murder of Tavon Nelson.

The information provided by Simms enabled law enforcement to pursue and arrest others who were involved in and shared responsibility for the five homicides and related shootings. Sanquan Carter was arrested on March 23, 2010, and Orlando Carter – like Simms himself – was arrested as he fled from the minivan on March 30, 2010. Based largely on information provided by Simms, however, arrest warrants were issued for Jeffrey Best, Robert Bost, and Lamar Williams on April 22, 2010. Numerous search warrants also were issued that day. Robert Bost and Lamar Williams were arrested on Thursday, April 22, 2010. Jeffrey Best was arrested on Monday, April 26, 2010. All were detained.

Of equal significance, in the government's view, is the key role played by Simms in clearing the name of an innocent young man, fourteen-year-old Malik Carter. As we have noted, on March

30, 2010, in the area of the 600 block of Yuma Street, S.E., Malik Carter was arrested after he was mistakenly identified by two police officers as the driver of the silver minivan. The circumstances resulting in the arrest of Malik Carter are understandable, but the fact remains that he had nothing to do with the violence that occurred on the evening of March 30, 2010. Charges against Malik Carter were dismissed on April 22, 2010, and the credit for establishing his innocence belongs chiefly to Nathaniel Simms. To Simms, it was important that no one be wrongly accused, just as it was important that those truly responsible be held accountable for their criminal conduct.

In debriefings with Simms, the government also learned that Orlando Carter, Jeffrey Best, Robert Bost, and Lamar Williams, like Simms himself, frequently sold drugs in the area of 6th and Chesapeake Streets, S.E. Simms identified several other individuals who were engaged in the same activity in that area, and described the drug trafficking there as being controlled by a relatively tight-knit group. Having reason to believe that these other drug traffickers might have information pertinent to the South Capitol Street investigation, the government initiated a pro-active drug investigation in the area of 6th and Chesapeake Streets, S.E. Because Simms had identified many of the drug traffickers, law enforcement was able to target specific individuals with pinpoint precision and, over the course of several months, controlled purchases of drugs were made from several such individuals.

The pro-active drug investigation in the area of 6th and Chesapeake Streets, S.E., resulted in the indictment and arrest of numerous individuals. Some were charged with drug offenses in United States District Court, and others were charged in Superior Court. Four of those arrested had information helpful to the government in the South Capitol Street investigation. They were Torey Shields ("Big" or "Biggie"), Harry Graham ("Chill Will"), Lamont Grantham ("Skeet"), and

Alphonso Moore ("What"). Three of these four signed plea and cooperation agreements with the government, and two of the three – Torey Shields and Harry Graham – testified at the South Capitol Street trial. They provided valuable testimony, and Simms is the person most deserving of credit for securing their cooperation. With the information provided by Simms, the government undertook a pro-active drug investigation that otherwise is not likely to have occurred, but also did so with an efficiency that yielded direct and beneficial results.

Simms himself appeared before the grand jury on December 2, 2010. His appearance was lengthy. His testimony began at 10:32 a.m., and ended at 4:09 p.m. The transcript of his grand jury appearance runs 170 pages. In the grand jury, Simms provided a graphic and detailed description of the shootings at issue in the South Capitol Street case. On December 16, 2010, the grand jury returned an initial twenty-four count indictment against Sanquan Carter, Orlando Carter, Jeffrey Best, Robert Bost, and Lamar Williams. Subsequently, on April 20, 2011, against the same individuals, the grand jury returned a fifty-four count superseding indictment. It was on that superseding indictment that trial commenced with jury selection on February 13, 2012.

At the South Capitol Street trial, Simms also testified at length. His testimony spanned five days – March 6, 7, 8, 12, and 13 – and the transcripts of his trial testimony exceed 800 pages. As might be expected, Simms was subjected to withering and aggressive cross-examination by five separate and experienced defense lawyers. He was challenged at every turn. Through it all, Simms remained focused on the task at hand: telling the truth. To suggest that the testimony provided by Simms contributed to the jury's fact-finding mission is an understatement. Simms's testimony was the cornerstone and foundation for the entire South Capitol Street prosecution, and the verdicts that were returned indicated that Simms was found by the jury to be credible.

Trial in the South Capitol Street case was a sizeable undertaking. It lasted some two and a half months, and entailed the presentation of over 100 government witnesses and the introduction of over 1000 exhibits. Trial began with jury selection on February 13, 2012, and concluded on May 7, 2012. The jury returned 174 guilty verdicts. All defendants were convicted of homicide and multiple felonies. Sanquan Carter was convicted of fifteen felony offenses, including one count of first-degree premeditated murder while armed and two counts of assault with intent to kill while armed (AWIKWA). Orlando Carter was convicted of fifty felony offenses, including five first-degree murders, four of which were with aggravating circumstances, and nine counts of AWIKWA. Jeffrey Best was convicted of forty-seven felony offenses, including five first-degree murders, four of which were with aggravating circumstances, and nine counts of AWIKWA. Robert Bost was convicted of thirty-four felony offenses, including four first-degree murders with aggravating circumstances, and seven counts of AWIKWA. Lamar Williams was convicted of twenty-eight felony offenses, including three second-degree murders with aggravating circumstances and seven counts of AWIKWA.

Sentencing in the South Capitol Street case occurred on Tuesday, September 11, 2012. Orlando Carter, Jeffrey Best, and Robert Bost were sentenced to life imprisonment without the possibility of release. Sanquan Carter was sentenced to fifty-four years in prison. Lamar Williams was sentenced to thirty years in prison. More than any other single witness, Nathaniel Simms deserves credit for the results that were achieved in the South Capitol Street case. Information he provided during debriefings resulted in the prompt identification and arrests of Jeffrey Best, Robert Bost, and Lamar Williams, and in the exoneration of Malik Carter. Simms's grand jury and trial testimony was detailed and compelling, and was strongly corroborated by that of other witnesses and

by physical and forensic evidence. It is not an overstatement to observe that Nathaniel Simms provided a blueprint for the entire South Capitol Street prosecution.

In sum, less than two weeks after his arrest on March 30, 2010, as a result of his own initiative, Nathaniel Simms was debriefed by law enforcement personnel. In the view of all who were involved in the debriefings, Simms was forthright, remorseful, and truthful. He not only described the criminal conduct of others; he also admitted and indicated a willingness to accept responsibility for his own criminal conduct, and the information he provided exonerated an innocent individual mistakenly arrested by the police. On April 21, 2010, only three weeks after his arrest, Simms signed a plea and cooperation agreement with the government. Pursuant to that agreement, on April 29, 2010, Simms entered a guilty plea on the public record to a seven-count Information charging him with two counts of conspiracy to commit murder and five counts of second-degree murder while armed.

Information provided by Simms during debriefings resulted in the issuance of arrest warrants for Jeffrey Best, Robert Bost, and Lamar Williams, as well numerous search warrants. Testimony by Simms in the grand jury contributed significantly to an initial indictment and ultimately a superseding indictment returned against Sanquan Carter, Orlando Carter, Jeffrey Best, Robert Bost, and Lamar Williams. Trial testimony by Simms, more than that of any other witness, contributed to guilty verdicts that were returned against all five of those individuals, each of whom was found guilty of murder and numerous related offenses.

Three of the five – Orlando Carter, Jeffrey Best, Robert Bost – were sentenced to life imprisonment without the possibility of release, and the other two – Sanquan Carter and Lamar Williams – were sentenced to lengthy prison terms. Without the cooperation of Simms, it is doubtful

that some of these individuals would have been held accountable for their violent criminal conduct. From the government's perspective, then, Nathaniel Simms has provided substantial assistance to law enforcement in the detection and prosecution of other offenders, and has established his eligibility for a departure under the District of Columbia's Voluntary Sentencing Guidelines.

V. Other Relevant Sentencing Considerations

The government turns now to a consideration of other relevant sentencing considerations apart from the substantial assistance that Simms provided in the investigation and prosecution of others. In that regard, the government will focus on four such considerations. First, we will discuss Simms's criminal record. Second, we will discuss pertinent social and family factors. Third, we will discuss the genuine remorse and empathy for the victims that Simms has exhibited since day one. Fourth, we will address the personal risk assumed by Simms, and the danger to which he was exposed, in entering his guilty pleas on the public record and in testifying as he did over the course of five days at the South Capitol Street trial. All of these considerations, in the government's view, bear legitimately on the Court's determination of what sentence to impose in this case.

A. Criminal Record

Simms was born on February 20, 1984. He is twenty-eight years old. As noted in the Pre-Sentence Report (PSR), Simms has four misdemeanor convictions as an adult – three for drug possession offenses and one for a Bail Reform Act violation – and no juvenile record. Nothing in his record indicates that he has a violent criminal disposition or that his involvement in the crimes that were the subject of his guilty plea could have been foretold. What follows is a brief summary of those cases, including one other case that resulted in an order of probation without adjudication of guilt.

- * 2009 Conviction for Possession of Marijuana. On November 19, 2009, Simms was arrested and charged with possession of marijuana (Docket No. 2009-CMD-024701). The arrest occurred at 5:10 p.m. at 646 Chesapeake Street, S.E. Officers Brown, Little, and Anderson drove past 646 Chesapeake Street, S.E., and saw several males gathered in a hallway. Officer Little entered the building and Simms moved quickly through a door on the lower level of the stairs and closed it behind him. Officer Little followed Simms through the door. Officer Little handcuffed Simms and took him out of the room. Officer Brown then entered the same room and found two plastic bags of suspected marijuana behind the door where Simms was standing. Simms was then arrested and searched. Fifty dollars was recovered from his pocket. On March 17, 2010, following a bench trial, Simms was found guilty. The Honorable Russell Canan sentenced Simms to 180 days in prison and suspended all but three days of that sentence. Simms was placed on one year of supervised probation and ordered to undergo drug treatment and to provide community service. Thus, Simms was on probation at the time he committed the offenses that were the subject of his guilty plea.
- * 2009 Conviction for Bail Reform Act Violation. On November 26, 2008, a bench warrant was issued for Simms following his failure to appear in a domestic simple assault case that was later dismissed. In the courthouse, Simms was arrested on the bench warrant on January 11, 2009, and was charged with failure to appear (Docket No. 2009-DVM-000101). On March 27, 2009, Simms entered a plea of guilty to a misdemeanor violation of the Bail Reform Act. On December 18, 2009, he was sentenced by the Honorable James E. Boasberg to time served and his probation was revoked.
- * 2007 Conviction for Misdemeanor Possession of Cocaine. On March 30, 2007, Simms was charged with possession of cocaine (Docket No. 2007-CF2-007470). He was arrested at 12:37 p.m. at Apt. #201, 4608 Benning Road, S.E. Members of the United States Marshal's Service responded to that location to execute a Superior Court Eviction Order. Simms was present when the DUSMs arrived. The DUSMs advised Simms that they wanted to pat him down for safety purposes. Simms then stated, "I have some crack in my pocket and some money in my shoes." Simms was searched by DUSM Shin, who located a pink plastic bag containing suspected crack cocaine (approximately 2 grams) and twelve smaller zip-lock bags of suspected crack cocaine. The DUSMs also recovered \$1,772 in currency from Simms's shoe. On June 22, 2007, Simms entered a plea of guilty to possession of cocaine. On July 19, 2007, he was sentenced by the Honorable James E. Boasberg to 180 days in prison. The execution of the sentence was suspended and Simms was placed on nine months of supervised probation, which expired satisfactorily.
- * 2007 Conviction for Attempted Possession of Cocaine. On March 4, 2007, Simms was charged with possession of cocaine (Docket No. 2007-CMD-005239). He was arrested at 8:49 p.m. in the 300 block of 17th Street, S.E. Simms was stopped for driving an unregistered vehicle. He was arrested and a search incident to arrest resulted in the recovery of a zip lock bag of suspected cocaine from his pants pocket. On March 27, 2007, Simms entered a plea of guilty to attempted possession of cocaine. On August 14, 2007, the

Honorable Stephen Eilperin sentenced Simms to 180 days in prison. The execution of the sentence was suspended and Simms was placed on nine months of supervised probation, which expired satisfactorily.

- * 2003 Probation Without Adjudication of Guilt for Possession of Marijuana. On January 7, 2003, Simms was charged with possession with intent to distribute marijuana and possession of marijuana (Docket No: 2003-CMD-003457). He was arrested at 6:30 p.m. in the 4600 block of 6th Street, S.E. MPD Officers were in that area in unmarked vehicles. Officers Cephas and Harris monitored a lookout for a black male wearing a green jacket and blue jeans. The officers saw such a person standing with Simms and several other individuals (a group of about six or seven individuals altogether). As Officer Cephas approached, Simms walked away from the group. Officer Cephas stopped Simms and asked him if he had anything on him. Simms replied that he had some bags of marijuana. In a subsequent search of Simms, officers recovered eleven zip lock bags of marijuana from Simms's jacket pocket and \$60.00 in currency. On March 5, 2003, Simms entered a plea of guilty to possession of marijuana. An order imposing probation without adjudication of guilt was entered by the Honorable Rhonda Reid Winston, and Simms was placed on nine months of supervised probation, which expired satisfactorily.

The government does not ask the Court to overlook Simms's criminal record – far from it. That record is a factor that bears fairly on the issue of sentencing. We think it is also fair to observe, however, that nothing about Simms' record of crime suggests that Simms has a violent criminal disposition. Three of his convictions were for misdemeanor drug offenses, and one was for a misdemeanor violation of the Bail Reform Act. Nothing about Simms's record explains the regrettable association he came to have with his co-defendants and the crimes that were the subject of his guilty plea. Nothing about it suggests that Simms, for reasons apart from his conduct in this case, is someone who is especially deserving of a severe sentence as a form of pure punishment or as a means of protecting society.

Simms's criminal record stands in rather marked contrast to most of the other defendants charged and convicted in the South Capitol Street case. Sanquan Carter, for example, who was nineteen years old when he was arrested on March 23, 2010, had been on release for only three days

in a pending criminal case, and was on probation in another case, when he took part in the homicide and shootings on March 22, 2010. He has an alarming juvenile record, and adult convictions in 2011 for carrying a pistol without a license, unlawful possession of an unregistered firearm, and unlawful possession of unregistered ammunition, and in 2010 for attempted possession of cocaine. Orlando Carter, plainly the driving force behind the crimes at issue in the South Capitol Street case, robbed and stabbed someone at the jail while pending trial, and also has a significant juvenile history. Jeffrey Best was convicted of gun offenses in both 2008 and 2009. Robert Bost was on supervised release and probation when the multiple homicides and shootings occurred on March 30, 2010, and has 2006 and 2007 convictions for possession with intent to distribute cocaine and carrying a gun, a 2012 conviction for possession of cocaine, and a juvenile record.

B. Social and Family Factors

Another factor that has helped shape the government's sentencing recommendation is Simms's difficult and troubling social and family background. This background is mentioned in the Pre-Sentence Report (PSR at 23-24), but deserves further comment. Simms was raised through age sixteen by his mother. He did not get a lot of attention from her, as she worked full time and otherwise had to care for Simms's older brother who was disabled and paralyzed. Id. at 23. Simms's father was "nearly non-existent" in his life (PSR at 28), due to drug addiction and incarceration, and when he was around, was far from a positive influence. Id. at 23-24.

At age sixteen, Simms moved in with his paternal grandmother Willamena Wright, who lived at 605 Galveston Street, S.E., just off of 6th Street, S.E. He developed a very close bond with her. Approximately a year after he moved in with his grandmother, however, she died, and Simms's "life took a downward spiral." PSR at 24. Simms's Aunt Natalie Mills would not allow Simms to stay

at 605 Galveston Street, S.E., anymore, and Simms began to live on the street, in cars, and with various friends and girlfriends. He dropped out of high school at the end of the 11th grade, in 2001. Virtually all of his friends were involved in drug trafficking, and Simms was drawn into that world. Simms essentially sold drugs, mostly marijuana, from 2002 through his arrest on March 30, 2010.

Simms was rootless, without meaningful family ties, and was in a constant search for affirmation. It was this search for acceptance and affirmation that, from the government's perspective, helps to a degree to explain the role Simms played in the crimes that were the subject of his guilty plea. Simms mistakenly thought he had found acceptance and affirmation in the relationships he had forged with Orlando Carter, Jeffrey Best, Robert Bost, and Lamar Williams. These relationships were not longstanding, but they provided Simms with some sense of family and friendship.

To hold onto those relationships, Simms did things that were out of character. He now deeply regrets those decisions, and appreciates how false his relationships were with those to whom he displayed such loyalty. Simms now sees his relationships with his co-conspirators in a better and more accurate light. In hindsight, and in his words, he wishes he had been man enough to stand up to them and to have withdrawn from their violent endeavors that killed and wounded so many innocent victims. Simms is ashamed for his failure to do that, and he regards his guilty plea and the consequences that will flow from it, and his truthful cooperation in the South Capitol Street case, as the least he could have done in an effort to make amends for his conduct.

C. Remorse and Empathy for Victims.

From the first time he met with law enforcement personnel and government counsel back on April 12, 2010, Simms has expressed deep, sincere, and genuine remorse for his criminal conduct

and empathy for the victims of the violent crimes in which he and others were involved. On many occasions Simms displayed tearful grief about his wrongdoing and its ramifications for others. Indeed, it is the government's perspective that it was Simms's conscience and concern for the victims, more than any other factor, that prompted him to accept responsibility for his criminal conduct by the entering a comprehensive guilty plea and to cooperate with the government in its investigation and prosecution of the others who were involved. At trial one defense counsel in particular belittled Simms, and later argued to the jury that the remorse displayed by Simms was contrived. In the government's view, nothing could have been further from the truth.

D. Personal Risk

In entering his guilty pleas and in testifying at length at the South Capitol Street trial, Simms accepted and faced significant risks to his own personal safety. Notably, the guilty pleas entered by Simms were on the public record and in an open courtroom. Given the very public profile of the South Capitol Street case, the plea proceedings were well attended by members of the press and by citizens at large, and were widely reported in newspapers, televised news, and on the internet. Similar coverage accompanied the testimony given by Simms over the course of five days at the South Capitol Street trial. Thus, Simms's cooperation with law enforcement in the South Capitol Street case has hardly been a secret. Hundreds of reports stemming from his cooperation are available on the internet, where images and sketches of him also are available. As a result of the publicized nature of his cooperation, Simms became a pariah in an institutional setting, where "snitches" are vilified and are the subject of scorn and retribution by other inmates. The point here is that Simms knowingly exposed himself to such dangers in entering the guilty pleas he did, and in the intervening two and a half years he has been threatened on more than one occasion.

Considerable efforts have been made by the government to ensure that Simms has remained safe while incarcerated, and these efforts undoubtedly will continue into the future in light of the realistic sentencing exposure to which Simms is exposed by virtue of his guilty pleas.

VI. Voluntary Sentencing Guidelines

Assuming the Court chooses to comply with the District of Columbia's Voluntary Sentencing Guidelines, the 2008 Manual, which applies to guilty pleas or verdicts entered on or after November 1, 2008, and before May 3, 2010, governs sentencing in this case. As noted in the PSR, Simms has a criminal history score of 1.00. For each of his two guilty pleas to conspiracy to commit murder, Simms faces a Guideline sentence of 48 to 96 months (4 to 8 years)(Master Grid, Group #5, Column B). For each of his five guilty pleas to second-degree murder while armed, he faces a mandatory-minimum term of five years in prison, and a Guideline sentence of 156 to 300 months (13 to 25 years)(Master Grid, Group #2, Column B). The Guidelines provide that statutory mandatory-minimum sentences "**must** be imposed and cannot be suspended." See DCVSG §3.6 (emphasis supplied). The Guidelines additionally mandate that in the event of conviction for violent offenses involving multiple victims in multiple events, or multiple victims in one event, consecutive prison terms must be imposed. DCVSG §6.1.²

The Guidelines also provide that the Court may depart from a sentence otherwise required by the Guidelines provided one or more mitigating factors are present. DCVSG §5.2.3. One such factor requires a finding that "[t]he defendant has provided substantial assistance to law enforcement in the detection or prosecution of other offenders, and departure for this reason does not demean the seriousness of the defendant's crime or create an unacceptable risk to the safety of the community."

² Conspiracy to commit murder is a crime of violence under the Voluntary Sentencing Guidelines. See DCVSG §7.4. It fits within Group #5 on the Master Grid. See Appendix C at C-7.

DCVSG §5.2.3(7). For reasons that have already been set forth, the government submits that Nathaniel Simms has met the requirements of this mitigating factor and thus that he is eligible for a sentencing departure. In that regard, we ask the Court specifically to find on the record that Simms (1) has provided substantial assistance to law enforcement in the detection or prosecution of other offenders, and (2) that departure for this reason does not (a) demean the seriousness of the defendant's crime or (b) create an unacceptable risk to the safety of the community.

VII. Sentencing Recommendation

As detailed in this memorandum, Nathaniel Simms has contributed significantly – more than any other individual – to the successful investigation and prosecution of the South Capitol Street defendants, and others, and thereby has established his eligibility for a sentencing departure under the Voluntary Sentencing Guidelines. Simms has four prior misdemeanor convictions, three for drug offenses and one for a violation of the Bail Reform Act. He has no convictions for crimes of violence. He candidly admitted to Tamika Ellis-Brooks, the Community Supervision Officer who prepared his PSR, that he sold marijuana (PSR at 26), and his admissions in that regard were consistent with information he provided to law enforcement during debriefings, and with testimony he gave both before the grand jury and at trial. Simms was on probation for possession of marijuana at the time he committed the offenses that were the subject of his guilty plea.

The criminal conduct of Simms that is at issue in this case is troubling. By his own admission, Simms was involved in two back-to-back conspiracies to commit murder, and he also played a part in five second-degree murders while armed. Even Simms has difficulty understanding and explaining his conduct. He deeply regrets his conduct, fully appreciates its wrongfulness and its criminality, and he regards his failure to terminate his involvement with the others who were

involved in all that transpired as a failure of manhood. To some extent, the willingness of Simms to go along with Sanquan Carter, Orlando Carter, Jeffrey Best, Robert Bost, and Lamar Williams, may be attributed to fear. To another extent it may reflect – in light of his troubling social and family history – a misguided search for affirmation and acceptance. Simms understands, though, that his conduct cannot be excused or condoned, and he fully expects to be punished and punished severely. Simms is at peace with the guilty pleas he entered. To his mind, accepting responsibility for his conduct and cooperating with law enforcement by providing truthful information and testimony was the right thing to do, and he knows there will be a significant price to be paid for his crimes.

The government submits that the sentence fashioned by the Court in this case must punish Simms for his criminal conduct while, at the same time, crediting him for his most meaningful contribution to the successful detection and prosecution of others. In seeking to strike that balance, and in recognition of Simms's comprehensive and remarkably prompt pre-indictment guilty plea, the government recommends that Simms be sentenced as follows. For each of the two conspiracies to commit murder to which Simms pled guilty (Count One and Count Three), the government recommends that the Court impose a sentence of sixty months (five years) in prison followed by three years of supervised release. For each of the five second-degree murders while armed to which Simms pled guilty, the government recommends that the Court impose a sentence of 120 months (ten years) in prison followed by five years of supervised release. The government recommends that all of the foregoing prison terms be run consecutively to one another, and the periods of supervised release be run concurrently to each other.

The government additionally recommends that the Court suspend execution of the sixty year sentence except for twenty-five years in prison, suspend execution of the period of supervised

release, and impose five years of probation. The resulting sentence, if imposed by the Court, would mean that Simms, who has been in jail for some thirty months (two and a half years), would have to serve approximately twenty more years in prison followed by five years of probation. The sentence thus would meaningfully punish Simms for his criminal conduct while, at the same time, also acknowledge his indispensable assistance in the detection and prosecution of numerous other individuals. By virtue of the suspension of some thirty-five years, the sentence also would ensure that should Simms again engage in criminal behavior within five years following his eventual release from prison, he would face significant additional prison time.

VIII. Conclusion

The South Capitol Street investigation as a whole established that Nathaniel Simms was an accomplished street-level drug dealer who, in the last few years before his arrest on March 30, 2010, plied his wares primarily in the area of 6th and Chesapeake Streets, S.E. By virtue of his activities in that area, Simms developed a relationship with Orlando Carter, Jeffrey Best, Robert Bost, and Lamar Williams, themselves fellow drug traffickers. Some of those individuals had a history of violence, but Simms himself did not. As a result of his relationship with those individuals, however, Simms was drawn into the violent crimes that were committed on March 22 and March 30, 2010, and that were the subject of his guilty plea on April 29, 2010.

The crimes in which Simms admittedly was involved, in eight days time, resulted in the death of five young individuals, the wounding of eight others, and shocked and offended the District of Columbia community. Simms regrets his conduct and is deeply remorseful about the incalculable harm that befell so many. In an effort to right his wrongs, Simms decided promptly after his arrest to cooperate with law enforcement and to accept responsibility for his conduct by entering a

comprehensive guilty plea to crimes that fairly represent the scope of his criminal behavior. Ever since, Simms has been faithful to the commitments he assumed in entering into a plea and cooperation agreement with the government.

Nathaniel Simms, in sum, has been a model cooperator – truthful from the outset, unflinching in his acceptance of responsibility, patient while detained for over two and a half years, and articulate and forthright when questioned about a wide range of crimes involving himself and friends and associates. It was information provided by Simms that enabled law enforcement to identify and arrest the other individuals who were involved in the homicide and shootings on March 22, 2010, and in the multiple homicides and shootings on March 30, 2010. It was information provided by Simms that exonerated young Malik Carter, who had been wrongfully accused of involvement in the South Capitol Street crimes.

It was information provided by Simms that enabled law enforcement to set up a pro-active drug investigation that resulted in the arrest of many, some of whom provided information highly relevant to the South Capitol Street investigation and trial. It was grand jury testimony by Simms that was instrumental in the return of an indictment against those primarily responsible for the violent crimes committed on March 22, 2010, and on March 30, 2010. It was Nathaniel Simms, more than any other witness in the South Capitol Street case, whose trial testimony helped secure the 174 guilty verdicts that were returned against Sanquan Carter, Orlando Carter, Jeffrey Best, Robert Bost, and Lamar Williams, all of whom were sentenced to lengthy prison terms.

For all of these reasons, the government asks this Court to find that Nathaniel Simms has rendered substantial assistance to law enforcement in the detection and prosecution of other offenders and is therefore entitled to a sentencing departure. The government also recommends that

the Court sentence Simms in accord with the sentencing scheme set forth in this memorandum. The recommended sentence is authorized by statute, would be Guideline compliant assuming the Court finds that Simms is both eligible for and entitled to a sentencing departure, and is appropriate given the circumstances of this case.

Respectfully submitted,

RONALD C. MACHEN JR.
UNITED STATES ATTORNEY

By: Michael D. Britton
MICHAEL D. BRITTON
BRUCE R. HEGYI
ADAM B. SCHWARTZ
ASSISTANT UNITED STATES ATTORNEYS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Government's Memorandum in Aid of Sentencing, on this 9th day of October 2012, was served by e-mail and by regular mail upon James E. Williams, Esq., Jester & Williams, P.O. Box 1165, Great Falls, Virginia 22066.

By:



Michael D. Brittin
Assistant United States Attorney